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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,744	10/29/2003	Paul Higginbotham	MET20US	5752
7590	06/29/2006		EXAMINER SOTELO, JESUS D	
C.A. Rowley P.O. Box 59 51 Riverside Parkway Frankford, ON K0K 2C0 CANADA			ART UNIT 3617	PAPER NUMBER

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,744

Applicant(s)

HIGGINBOTHAM ET AL.

Examiner

Jesús D. Sotelo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _____ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-8 and 10-17 is/are rejected.
- 7) ☒ Claim(s) 5 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1 and 3-17 are in the application. Claim 2 has been canceled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 8, and 10-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 4, lines 2 and 3, the phrase "to said" in line 2 is repeated starting on line 2.

There is no proper antecedent for "said belt means".

In claims 10-17, lines 2 and 3, the phrase "to said" is repeated. There is no proper antecedent for "said lateral buoyancy areas".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabo (2,950,488) in view of Daggs (6,905,383)

Sabo discloses a buoyancy device comprising a central portion shown generally around zipper 45 for forming a rear buoyancy area 21, 22 interconnected to a pair of lateral portions, each

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forming an under arm buoyancy area 43, 44 by a pair of front portion forming front buoyancy areas 23; each of said pair of front portions connecting its adjacent lateral portion to the central portion; the central portion and the pair of front and lateral portions forming a simulated W-shape (figure 3) when viewed in a plan view; each of the lateral portions projecting from their front portion a distance sufficient to extend under an adjacent arm of a user. Although figure 2 clearly shows the lobes 43, 44 extending rearwardly to an area under the user's arm, the degree to which the lobe extends rearwardly is not very definite. Daggs disclose a buoyancy device similar to that of Sabo. In figures 3-6 and 10 portions of the front part 22 is shown extending rearwardly to an area under the arms of the user and ending behind the user. In view of these disclosures, it would have been obvious to one skilled in the art to extend the lobes 43, 44 in Sabo such that they extend to the rear of the user, generally as taught by Daggs. The degree to which the lobes are extended is deemed to have been an obvious matter of design choice dependant on the buoyancy characteristics desired. The recitation that the construction "causes the user to float in an upright position at an angle of between 45 and 90 degrees is considered a statement of desire functional result which carries no patentable weight.

The buoyancy device of Sabo includes a plurality of connecting means, including connecting means 45 for releasably connecting adjacent portions of the pair of front buoyancy areas, as in claims 6 and 7.

6. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabo (2,950,488) in view of Daggs (6,905,383), as applied to claim 1 above, and further in view of Evert (4,498,882).

Evert discloses a buoyancy device similar to that of Sabo and Daggs and teaches the use of means for releasably connecting adjacent portions of the pair of front buoyancy areas together, as in claims 7; an encircling belt means (46) and means (48) for releasably connecting the front buoyancy areas to the belt means, as in claim 3 and means (49a) for releasably connecting the central portion to the belt means. In view of these disclosures, it would have been obvious to one skilled in the art to provide the buoyancy means of Sabo with belt means and releasable securing means for connecting the front buoyancy members to the belt means generally as taught by Evert. As shown by Sabo, varied connecting means can be provided in different locations.

Allowable Subject Matter

7. Claims 5 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments filed 4/14/06 have been fully considered but they are not persuasive.

9. Applicant's arguments with respect to claims 1, 3, 6, and 7 have been considered but are moot in view of the new ground(s) of rejection.

10. Applicant argues that the references do not teach the concept of terminating the lateral portions behind the user. The reference to Daggs clearly shows this concept. It is noted that Sabo extends his lobes to an area beneath the arms of the user. Sabo, however, does not disclose

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to what extent this lobes extend. The mere extension of the lobes to an area just behind the user would meet the language of the claims is deemed to have been an obvious matter of design choice to one having ordinary skill in the art, particularly in view of the teachings of Daggs.

11. Applicant argues that the specific arrangement of the lobes in his device creates a specific angle of between 45 and 90 degrees the user in the water. This is merely a statement of desired functional result not carrying any patentable weight. An arrangement as per Sabo having the lobes extending a small amount behind his back would similarly create a buoyancy that would tend to lift his back a small amount relative to his head.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jesús D. Sotelo whose telephone number is 571-272-6686. The examiner can normally be reached on Mon. – Fri. 5:30 AM – 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Samuel J. Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Jesús D. Sotelo
Jesús D. Sotelo

Primary Examiner

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KNX 03D69 ☺

jds

June 26, 2006